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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE USA, INC., *et al.*,
Plaintiffs,
v.
SAP AG, *et al.*,
Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**DECLARATION OF ZACHARY
ALINDER IN SUPPORT OF
DEFENDANTS' ADMINISTRATIVE
MOTION TO PERMIT DEFENDANTS
TO FILE UNDER SEAL
DOCUMENTS SUPPORTING
DEFENDANTS' REPLY IN SUPPORT
OF MOTION FOR SANCTIONS AND
REPLY IN SUPPORT OF MOTION
TO COMPEL**

Case No. 07-CV-01658 PJH (EDL)

DECLARATION OF ZACHARY ALINDER IN SUPPORT OF DEFENDANTS' ADMINISTRATIVE MOTION TO PERMIT
DEFENDANTS TO FILE DOCUMENTS UNDER SEAL

1 I, Zachary Alinder, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and a partner at
3 Bingham McCutchen LLP, counsel of record for plaintiffs Oracle USA, Inc., Oracle
4 International Corporation and Oracle EMEA Ltd. (collectively, "Oracle"). I have personal
5 knowledge of the facts stated within this Declaration and could testify competently to them if
6 required.

7 2. I have reviewed the documents identified as containing quotes or other material
8 from documents designated by Plaintiffs as "Confidential Information" or "Highly Confidential
9 Information - Attorneys' Eyes Only": Portions of Defendants' Reply in Support of Motion for
10 Sanctions Pursuant to Fed. R. Civ. P. 37(c) and 16(f) ("Motion for Sanctions Reply"); Portions
11 of the Reply Declaration of Stephen K. Clarke in Support of Defendants' Motion for Sanctions
12 Reply; Portions of Defendants' Reply in Support of Motion to Compel Production of Financial
13 Information ("Motion to Compel Reply"); Portions of the Declaration of Stephen K. Clarke in
14 Support of Defendants' Motion to Compel Reply; and Exhibit 8 to the Jason McDonell in
15 Support of Defendants' Motion to Compel Reply ("McDonell Declaration").

16 3. Each of the documents described above contains non-public, commercially
17 sensitive and confidential information the disclosure of which would create a risk of significant
18 competitive injury and particularized harm and prejudice to Oracle. In addition to reviewing the
19 documents described in ¶2, I have consulted with Oracle employees regarding the risk of
20 significant competitive injury and particularized harm and prejudice to Oracle resulting from the
21 disclosure of the types of information contained in these documents. Further, these same types
22 of confidential information are the subject of previous declarations filed by Plaintiffs in support
23 of prior motions to seal, which further attest to the risk of significant competitive injury and
24 particularized harm and prejudice to Oracle. *See, e.g.,* Declaration of Jennifer Gloss in Support
25 of Plaintiffs' Administrative Motion to File Under Seal Documents Supporting Plaintiffs'
26 Oppositions to Defendants' Motion for Sanctions and Motion to Compel (Docket # 377).

27 4. Oracle has narrowly tailored its request by only requesting redaction or sealing of
28 the specific passages, documents and information that contain the most commercially sensitive

1 and confidential information. For example, Oracle agrees that the material on pages 7 and 13 of
 2 the Motion for Sanctions Reply and the material on Page 4 of the Declaration of Stephan Clarke
 3 in Support of Defendants' Motion to Compel Reply can be filed publicly. The passages and
 4 exhibits for which Oracle does request filing under seal are detailed as follows, and contain
 5 the specified types of confidential and commercially sensitive information justifying their
 6 protection under the sealing rules of this Court, including Rule 26(c), Local Rule 79-5, and this
 7 Court's Standing Order on Confidential and Sealed Documents:

- 8 a. **Portions of Defendants' Sanctions Reply Brief:** Page 12 of
 9 Defendants' Sanctions Reply includes a passage that contains or reflects
 10 specific non-public, commercially sensitive and confidential information
 11 and testimony regarding competitive strategy, including incorporation of
 12 details testified to by Oracle high-level executives concerning competitive
 13 customer information. The disclosure of such confidential information
 14 would create a risk of significant competitive injury and particularized
 15 harm and prejudice to Oracle.
- 16 b. **A portion of the Declaration of Stephen K. Clarke in Support of**
 17 **Defendants' Motion for Sanctions Reply:** Pages 2 (including ¶8), 3 and
 18 7 of Mr. Clarke's Declaration include passages that contain specific non-
 19 public, commercially sensitive and confidential information regarding
 20 Oracle customers; non-public, commercially sensitive and confidential
 21 information regarding customer license and support costs; and non-public,
 22 commercially sensitive and confidential information regarding
 23 competitive strategy, including competitive cost comparisons. The
 24 disclosure of such confidential information would create a risk of
 25 significant competitive injury and particularized harm and prejudice to
 26 Oracle.
- 27 c. **Portions of Defendants' Motion to Compel Reply:** Pages 3-5, 7, 9, 12,
 28 and 14-15 of Defendants' Motion to Compel Reply include passages that

1 contain or reflect non-public, commercially sensitive and confidential
 2 information and testimony regarding Oracle's financial systems,
 3 practices, and policies; and non-public, commercially sensitive and
 4 confidential information and testimony regarding Oracle's inter-company
 5 licensing practices and revenue stream. The disclosure of such
 6 confidential information would create a risk of significant competitive
 7 injury and particularized harm and prejudice to Oracle.

8 **d. Portions of the Declaration of Stephen K. Clarke in Support of**
 9 **Defendants' Motion to Compel Reply:** Pages 3 and 5-7 of Mr. Clarke's
 10 Declaration include passages that contain or reflect non-public,
 11 commercially sensitive and confidential information and testimony
 12 regarding Oracle's financial systems, practices, and policies; and non-
 13 public, commercially sensitive and confidential information and
 14 testimony regarding Oracle's inter-company licensing practices. The
 15 disclosure of such confidential information would create a risk of
 16 significant competitive injury and particularized harm and prejudice to
 17 Oracle.

18 **e. Ex. 8 to the McDonell Declaration:** Exhibit 8 contains portions of
 19 Oracle's Supplemental Responses and Objections to Defendants' Second
 20 and Third Targeted Search Requests, and contains non-public, sensitive
 21 and confidential information and testimony regarding Oracle's financial
 22 reporting systems and the means by which Oracle tracks specific financial
 23 data points, like sub-license fee payments. The disclosure of such
 24 confidential information would create a risk of significant competitive
 25 injury and particularized harm and prejudice to Oracle.

26 5. Plaintiffs have protected information described above in Paragraph 4(a)-(e) from
 27 improper public disclosure through the Stipulated Protective Order that is designed to prevent the
 28 Parties' private commercial information and customer information from being improperly

1 disclosed. Under the terms of that Order, Plaintiffs designated certain documents, deposition
2 transcripts and discovery responses containing private commercial information as either
3 “Confidential” or “Highly Confidential - Attorneys’ Eyes Only” prior to producing such
4 documents in the course of discovery. As attested to above, the documents described in
5 Paragraph 4(a)-(e) contain certain information taken from documents and testimony that was
6 designated either “Confidential” or “Highly Confidential - Attorneys’ Eyes Only”. Absent the
7 requested sealing, these documents would provide valuable insight into Oracle’s competitive and
8 pricing strategies and financial systems, practices, and policies, giving current and prospective
9 customers and competitors specific leverage to use against Oracle.

10 I declare under penalty of perjury that the foregoing is true and correct. Executed
11 in San Francisco, California, on August 11, 2009.

12
13 /s/ Zachary Alinder
Zachary Alinder